

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X	
EQUAL EMPLOYMENT OPPORTUNITY	)
COMMISSION,	)
	)
Plaintiff,	)
	)
v.	)
	)
DAY & ZIMMERMAN NPS, INC.	)
	)
Defendant.	)
-----X	

CV-11-4741 (JBW)(MDG)

CONSENT DECREE

This action was initiated on September 28, 2011 by Plaintiff Equal Employment Opportunity Commission ("EEOC"), an agency of the United States Government, alleging that Defendant Day & Zimmerman, NPS, Inc. ("D&Z" or "defendant") engaged in unlawful discrimination against Carlos Hughes on the basis of his race, African American, by subjecting him to a hostile environment on the basis of race and retaliating against him by unlawfully terminating his employment, in violation of Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991. D&Z denies all of the EEOC's allegations.

EEOC and D&Z ("the parties") desire to settle this action, and therefore stipulate to entry of the Decree as final and binding between the parties and D&Z's successors and any other corporation or entity that merges with, purchases or acquires D&Z.

In consideration of the mutual promises of each party to the Decree, the sufficiency of which is hereby acknowledged, the parties agree as follows, the Court finds appropriate, and it is therefore ORDERED, ADJUDGED AND DECREED that:

**A. GENERAL PROVISIONS**

1. The Decree resolves all issues raised in EEOC Charge Number 846-2009-15766 and in EEOC's Complaint in this case. The Decree in no way affects the EEOC's right to process any other pending or future charges that may be filed against defendant and to commence civil actions on any such charges as the EEOC sees fit.

2. The parties agree and the Court finds that the Court has jurisdiction of the subject matter of this action and of the parties, that venue is proper, and that all administrative prerequisites have been met.

3. The parties have agreed that the Decree may be entered into without Findings of Fact and Conclusions of Law having been made and entered by the Court.

4. The Decree is being issued with the consent of the parties and does not constitute an adjudication or finding by the Court on the merits of the allegations of the Complaint.

5. No party will contest the validity of the Decree or the jurisdiction of the United States District Court to enforce the Decree and its terms, and any party has the right to bring enforcement proceedings upon the breach of any of the terms of the Decree.

6. D&Z will provide a copy of the Decree to any successors and to any other corporation or entity that merges with, purchases or acquires D&Z.

**B. MONETARY RELIEF**

7. Within twenty-one (21) days of entry of the Decree, D&Z will pay Carlos Hughes a total of \$190,000.00. This payment will be made in the form of two separate checks. The first check will be made payable to Carlos Hughes for back pay in the amount of \$130,000.00. This payment will be reported on an IRS Form W-2 and will have all applicable employee taxes, FICA, and other federal contributions deducted from it. The second check will be made payable

to Carlos Hughes in the amount of \$60,000.00 for compensatory damages. This payment will be reported on an IRS Form 1099. D&Z will utilize the information contained on the IRS Form W-4 it has in its records for Carlos Hughes in processing the first check. Carlos Hughes will provide D&Z with a completed IRS Form W-9 in order to assist with the processing of the second check.

8. The checks referred to in paragraphs ¶ 7 above will be sent to claimant Carlos Hughes at an address to be provided by EEOC, together with appropriate tax forms. D&Z will simultaneously send a copy of the check and tax forms to Michael Ranis, EEOC New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004.

9. D&Z will be responsible for paying its portion of applicable payroll taxes.

**C. CONSENT DECREE MONITOR**

10. D&Z appoints Lisa Ann Cooney as its Consent Decree Monitor. In her capacity as Consent Decree Monitor, Ms. Cooney will submit to the EEOC a status report every six (6) months for the duration of the Decree. The status report will exclusively contain: (1) the name of any D&Z employee at the Charles Poletti Power Plant, the New York Power Authority Small Gas Plants and/or the New York Power Authority Kensico Hydro facility who made a complaint of discrimination in the preceding six (6) month period; (2) the name of the individual(s) complained about; (3) the location at which the employee and individual(s) complained about work; (4) a statement as to whether the company's investigation of the complaint resulted in a determination that the complaint was "substantiated," "not substantiated" or "inconclusive;" and (5) a description of the discipline (if any) imposed as a result of the complaint.

11. D&Z will give their full cooperation to the Consent Decree Monitor in the performance of her duties under the Decree.

12. Should Ms. Cooney cease to act as Consent Decree Monitor for any reason during the duration of the Decree, D&Z will provide written notice to the EEOC within 7 days of when it becomes aware of the need to designate a new Consent Decree Monitor identifying a replacement Consent Decree Monitor.

**D. TOLL-FREE COMPLAINT HELPLINE**

13. D&Z will continue to maintain The Ethics and Employee Advocate Help Line at 1-877-319-0270 for reporting ethics and other safety issues, including incidents of discrimination, harassment, or retaliation. It will continue to post in each of the facilities referred to in Paragraph 22 in conspicuous places where employee notices are posted an 11" x 17" poster in the form attached as Exhibit A containing the toll-free number, as well a website that can be used for reporting, identifying the Ethics Officer responsible for that site, and specifically stating that there will be no retribution or reprisals for reporting a suspected violation in good faith.

**E. ANTI-DISCRIMINATION POLICIES AND PROCEDURES**

14. Defendant D&Z, its successors, and any other corporation or entity that merges with, purchases or acquires D&Z will follow Title VII's prohibition against discrimination and will not discriminate against any person on the basis of race in any phase of employment, including recruitment, hiring, job assignment, promotion, termination, training, or other terms, conditions or privileges of employment. D&Z will investigate and remediate any complaints of discrimination on the basis of race of which it is made aware.

15. Defendant D&Z, its successors, and any other corporation or entity that merges with, purchases or acquires D&Z will follow Title VII's prohibition against retaliation and will not retaliate against any person because of opposition to any practice declared unlawful under Title VII, because of the filing of a charge, giving of testimony or assistance, or participation in

any manner in any investigation, proceeding, or hearing under Title VII. D&Z will investigate and remediate any complaints of retaliation of which it is made aware.

16. D&Z has provided the EEOC with a copy of its current and already existing Policies on Non-Discrimination and Harassment.

17. D&Z has provided the EEOC with a copy of its current and already existing Code of Ethics and Standards of Business Conduct, which contains information on reporting ethical violations and which is attached at Exhibit B.

**F. TRAINING**

18. D&Z will provide anti-discrimination training to all of its non-managerial employees at the Charles Poletti Power Plant, including foremen. The training will contain detailed information regarding all available reporting mechanisms should an employee need to report a complaint of discrimination, harassment or retaliation. The training will be provided to all non-managerial employees at the Charles Poletti Power Plant (including foremen) in a single thirty (30) minute session and such session will occur between January 1<sup>st</sup> and April 1<sup>st</sup> of each year for the duration of the Consent Decree. D&Z will distribute a copy of the policies and procedures set forth in Exhibits B and C during the training sessions described in this paragraph to the non-managerial employees at the Charles Poletti Power Plant. For those non-managerial employees, including foremen, who are hired at the Charles Poletti Power Plant after the training has been conducted for the year and before the next scheduled training session, D&Z will provide those employees with copies of its anti-discrimination policies and ensure that those employees are aware of all avenues and mechanisms for reporting violations of such policies.

19. D&Z will provide all of its supervisors and managers at the Charles Poletti Power Plant, the New York Power Authority Small Gas Plants and the New York Power Authority

Kensico Hydro facility with annual Civil Treatment: Fair Employment Rights and Responsibilities training ("Civil Treatment training"). Oniz Flores and Ron Hax will also receive the Civil Treatment training at the same time it is provided to the supervisors and managers at the Charles Poletti Power Plant, the New York Power Authority Small Gas Plants and the New York Power Authority Kensico Hydro facility. The Civil Treatment training will consist of the 2008 Civil Treatment curriculum materials already provided to and approved by the EEOC. The duration of the Civil Treatment training is four (4) hours. Mr. Flores, Mr. Hax, and each supervisor or manager at the Charles Poletti Power Plant, the New York Power Authority Small Gas Plants and the New York Power Authority Kensico Hydro facility will participate in the Civil Treatment training by May 1<sup>st</sup> of each year for the duration of the Decree.

20. Within seven (7) days of the completion of each training session referenced in ¶¶18-19 above, D&Z will provide to the EEOC sign-in sheets showing who attended the training(s), the job title of each such individual, and indicate the subject matter of the training and its beginning and ending time.

**G. OTHER REMEDIES**

21. If D&Z receives any inquiries from prospective employers regarding Carlos Hughes, D&Z will refer said employers to Debra Witman, Day & Zimmermann NPS, 1827 Freedom Road, Suite 101, Lancaster, PA 18601, 717.391.3100. Ms. Witman will provide the prospective employer with the dates of Carlos Hughes' employment with D&Z and his position. Given the types of businesses in which D&Z operates and the regulations governing those types of businesses, the verification process may also require Ms. Witman to provide prospective employers with the reason for Carlos Hughes' separation from D&Z. As part of the negotiated settlement of this matter, D&Z will change the reason currently identified for Carlos Hughes'

separation, "Discharge—Violated Safety Rules," to "Lay Off—Assignment Complete." Apart from his dates of employment, position, and the reason for his separation from D&Z ("Lay Off—Assignment Complete"), no additional information about Carlos Hughes' employment with D&Z will be disclosed to any prospective employer, except for any disclosure required by law pursuant to subpoena or court order.

H. **ADDITIONAL NOTICES AND POSTING**

22. D&Z will post and maintain the EEOC's "EEO is the Law" poster in the Charles Poletti Power Plant, the New York Power Authority Small Gas Plants and the New York Power Authority Kensico Hydro facility in conspicuous places where employee notices are posted.

23. Within 7 days of entry of the Decree, D&Z will post and maintain the Notice, attached hereto as Exhibit C, at the Charles Poletti Power Plant in a conspicuous place where employee notices are posted. The Notice will remain posted for the duration of the Consent Decree.

24. D&Z will continue to post and maintain a copy of its Policies on Non-Discrimination and Harassment (which include its Discrimination and Harassment Complaint Procedure) in the Charles Poletti Power Plant, New York Power Authority Small Gas Plants, and the New York Power Authority Kensico Hydro facility in conspicuous places where employee notices are posted.

I. **ADDITIONAL MONITORING BY EEOC**

25. In the event the EEOC believes D&Z has failed to comply with any provision of the Decree, it shall notify Lisa Ann Cooney, Day & Zimmermann, 1500 Spring Garden Street, Philadelphia, PA, 19130, in writing of the non-compliance and afford D&Z thirty (30) days after service of the notice to remedy the non-compliance.

26. All materials required by the Decree to be sent to the EEOC will be addressed to:

Equal Employment Opportunity Commission  
New York District Office – Legal Unit  
Attention: Michael Ranis, Trial Attorney  
New York, NY 10004-2112

**J. DURATION OF DECREE**

27. The Decree will remain in effect for three years from the date of entry. The court retains jurisdiction over the action during the duration of the Decree. The matter may be administratively closed but will not be dismissed during the duration of the Decree. Within 30 days after the date set for the expiration of the Decree, the parties will submit a stipulation of dismissal to the court or a notice that the Decree has not expired because an enforcement action is pending.

28. The Decree will not expire while any enforcement action concerning the Decree is pending.

29. Each party will be responsible for its own attorneys' fees and costs.

SO ORDERED, ADJUDGED AND DECREED on March 11, 2013.

HON. 

Jack B. Weinstein, U.S.D.J.

APPROVED IN FORM AND CONTENT:

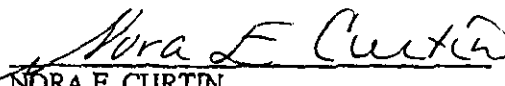
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION




ELIZABETH GROSSMAN  
Regional Attorney

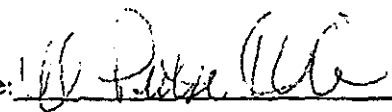
*close the case, subject  
to a motion to suppress or  
modify 3/11/13 JW*



  
NORA E. CURTIN  
Supervisory Trial Attorney

  
MICHAEL B. RANIS (3757)  
Trial Attorney  
EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
New York District Office  
33 Whitehall Street  
New York, NY 10004  
(212) 336-3701  
michael.ranis@eeoc.gov

DEFENDANT DAY & ZIMMERMANN NPS,  
INC.

Name:   
Title: DZNP5 UNIT CONTROLLER

# **EXHIBIT A**

You have the option of making your report confidential.

# Questions about the right thing to do?

1. See your supervisor or call your Ethics Officer

OR

2. Report your question or concern via  
<https://dayzimaalertline.com>

OR

3. Call 877-319-0270



Day & Zimmermann  
CORPORATION

***There will be no retrributions or reprisals  
for reporting a suspected violation in good faith.***

date posted

# **EXHIBIT B**

*Code of Ethics and Standards of Business Conduct*

To: All Day & Zimmermann NPS Collective Bargaining Employees  
Subject: Code of Ethics and Standards of Business Conduct

Day & Zimmermann believes that it is imperative that our employees and those of our vendors act with honest and integrity at all times. If you know or think an action is unethical, don't take it. If you are not sure, ask your supervisor or the Ethics Officer for the site where you are assigned.

Become familiar with the issues that affect your job so that you know what standards apply. The following pages do not cover every ethical problem, but serve as a guide for when you must use your own judgment. If you believe there are any potential breaches of ethics or if any matter gives you concern about its legality or propriety, immediately contact and disclose this matter to your supervisor, the Ethics Officer for the facility where you are assigned, or to the toll free help line at 877-319-0270.

## **CODE OF ETHICS AND STANDARDS OF BUSINESS CONDUCT**

### *Workplace Environment*

The way you act on the job determines the safeness, productivity and atmosphere of the workplace for you and your coworkers.

**Standard:** The Company is committed to providing a safe, environmentally sound workplace in which employees are encouraged to excel. As an employee, you are responsible to do your best following procedures to do your job safely, to treat others with respect and to protect the environment from potential negative effects from our business activities.

**Guideline-Safety:** A safe workplace starts with you. You are responsible for knowing potential risks and hazards involved in the performance of your job for taking whatever steps are prescribed to minimize those risks to you and your fellow workers. You must know, understand and follow procedures for safety and wear all necessary protective equipment.

**Guideline-Quality:** You are responsible for the quality of your own work and for your contribution toward meeting the company's and the clients' standards for performance. You must always try to correct or report a defect or error in your work and always follow specified procedures, quality checks and contractual agreements.

**Guideline-Drug Free workforce/workplace:** The Company supports a drug free workplace. You are prohibited from illegal use, sale, purchase, transfer or possession of drugs while on company or client property and may be subject to random drug and alcohol testing. You will not be allowed to perform your job while under the influence of drugs or alcohol.

**Guideline-Employment Practices:** The Company is an equal employment opportunity employer and follows all applicable laws and regulations including the Americans with Disabilities Act. The company hires individuals based on their ability to perform the job. The company values diversity and will not tolerate harassment of or by its employees for any reason. You must treat all coworkers with respect.

**Guideline-Environmental Protection:** The Company has an obligation to minimize, ease or eliminate any negative impact on the environment from its operations. It is your duty to avoid environmental contamination as you perform your job. You are also encouraged to conserve natural resources. You must follow all applicable laws, regulations and industry standards for protection of the environment.

### **Information Recording and Reporting**

*The company's records must be reliable and it is very important that you are sure that any information you are responsible for collecting, recording, reporting or approving is up to date and accurate.*

**Standard:** All company records, reports, time sheets, pricing data, invoices and other business documents must be prepared accurately and honestly. It is a federal crime to present a false claim to the U.S. government knowingly. It is fraud in the private sector. Be sure that any document that you prepare is correct. You must also assist government auditors, where applicable, who are checking our records and not block their efforts.

**Guideline-Test/Training Records:** If you are responsible for conducting tests and recording results, whether on people or on materials, you are responsible for recording accurately the actual results of the test. Both the company and its clients must be able to rely on the truthfulness and accuracy of test results and any follow up corrective action. Re-testing is better than risking someone's safety.

### **PROTECTING RESOURCES**

*As an employee, you have the responsibility to preserve and protect the property, money and information of the company and its customers.*

**Standard:** Property, money and information that belong to the company or its clients must be preserved, protected and accounted for. As an employee, you have a duty to be aware of costs, since in working for our customers, cost control is imperative.

**Guideline-Physical Property:** If you are working with materials and equipment that belong to a client or the company, you are responsible for those items in your possession. You must make sure that client or company-owned property in your care is used properly, by authorized personnel and only for the purpose intended. Company property may not be used for personal benefit, sold, loaned, give away or otherwise disposed of without proper authorization.

### **HOW TO HANDLE AN INTEGRITY CONCERN**

Get the information to define your concern (who, what, where, when).

Report it quickly, either to your supervisor, the Ethics Officer for the site where you are assigned or through the toll free help line number.

You may report anonymously. Most important is to raise the issue as early as possible so that your concerns can be addressed. No reprisals will be taken against individuals who report ethical concerns in good faith.

**What should you do?** However you chose to report your concern, your first step is to define what your concern is and is based on. Who or what is the concern? When did the concern come up? Where did it happen? Be clear about what is bothering you about the situation.

Take your concern to someone that can help you with it. It may be your supervisor. It may be the Ethics Officer for the site where you are assigned. It may be the toll free help line. Whatever you chose to do, do it quickly. Don't let the concern build up and interfere with your ability to focus on your own assignment.

*Understand that this is your duty to report any ethical or compliance concerns and know that you have the full support of Day & Zimmermann in making your report. We cannot live the company value of Integrity without everyone's commitment to support the effort.*

# EXHIBIT C

**EXHIBIT C**

**NOTICE TO DAY & ZIMMERMANN NPS EMPLOYEES**

This Notice has been posted pursuant to a settlement entered into by Consent Decree by the U.S. Equal Employment Opportunity Commission ("the EEOC") and Day & Zimmermann NPS, Inc. in resolution of a court complaint of race discrimination and retaliation filed against Day & Zimmermann NPS, Inc.

Federal law prohibits discrimination and/or harassment based on an employee's race, color, sex, national origin, disability, religion, or age status. Federal law also prohibits retaliation against any employee who files a charge of discrimination, who opposes unlawful activity, or who cooperates in the investigation of a charge or otherwise exercises her or his rights under law.

Day & Zimmermann NPS, Inc. strongly supports and will continue to comply with such Federal law in all aspects, and it will not take any action against employees because they have exercised their rights under the law by filing charges with the U.S. Equal Employment Opportunity Commission or by otherwise opposing employment practices made unlawful under Title VII of the Civil Rights Acts of 1964 and 1991. Day & Zimmermann NPS, Inc. will investigate and remediate any complaints of discrimination and retaliation of which it is made aware.

The terms of the Consent Decree require that Day & Zimmermann NPS, Inc.:

1. Will follow Title VII's prohibition against retaliation and will not retaliate against any person who exercises his or her rights under federal anti-discrimination laws.
2. Will follow Title VII's prohibition against racial harassment and discrimination and will not discriminate against any person on the basis of race in any phase of employment.
3. Continue to maintain written policies and procedures prohibiting discrimination and harassment and enabling employees to file discrimination complaints without fear of retaliation and post these policies and procedures in the Charles Poletti Power Plant, New York Power Authority Small Gas Plants, and the New York Power Authority Kensico Hydro facility.
4. Continue to maintain the toll-free Ethics and Employee Advocate Helpline for reporting incidents of discrimination, harassment, or retaliation.
5. Provide annual training on federal laws prohibiting employment discrimination, harassment and retaliation to all non-managerial employees working for Day & Zimmermann NPS at the Charles Poletti Power Plant and distribute a copy of the written policies and procedures prohibiting discrimination



and harassment and enabling employees to file discrimination complaints without fear of retaliation to all non-managerial employees at the Charles Poletti Power Plant during this training session.

6. Provide annual training on federal laws prohibiting employment discrimination, harassment and retaliation to supervisors and managers working for Day & Zimmermann at the Charles Poletti Power Plant, the New York Power Authority Small Gas Plants and the New York Power Authority Kensico Hydro facility.

7. Provide periodic reports to the EEOC regarding any discrimination complaints made by employees;

8. Permit the EEOC to monitor compliance with the Consent Decree;

9. Post this Notice.

Should you have a complaint of discrimination or harassment you may contact:

U.S. Equal Employment Opportunity Commission  
33 Whitehall Street  
New York, New York 10004(800) 669-4000  
Website: [www.eeoc.gov](http://www.eeoc.gov)

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE ALTERED OR  
DEFACTED BY ANYONE OR COVERED BY ANY OTHER MATERIAL**

This Notice must remain posted for three (3) years from the date shown above and must not be altered, defaced, or covered by any other material. Any questions concerning this Notice or compliance with its provisions may be directed to the U.S. Equal Employment Opportunity Commission at the above numbers, or 1-800-669-4000, or TTY 1-800-669-6820, or to your Manager.

SIGNED this 6 day of March, 2013



BUSINESS UNIT CONTROLLER, DAY & ZIMMERMANN, NPS, INC.

DO NOT REMOVE THIS NOTICE UNTIL March 8, 2016.